

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

TYRONE OLIVER, Plaintiff

v. Civil Action No. 2:09-cv-2555-STA-dkv

DEUTSCHE BANK NATIONAL TRUST COMPANY, et al. Defendants

**DEUTSCHE BANK NATIONAL TRUST COMPANY’S MOTION TO DISMISS FOR
PLAINTIFF’S FAILURE TO COMPLY WITH COURT ORDER**

Defendant Deutsche Bank National Trust Company (“DBNTC”) submits this Motion to Dismiss for Plaintiff’s Failure to Comply with Court Order, stating as follows:

1. On July 29, 2009, Plaintiff filed this action against DBNTC and Wilson & Associates PLLC.¹
2. On September 14, 2009, the Court entered its Scheduling Order (D.E. #6), which set the deadline for all parties to serve their initial disclosures on or before September 25, 2009.
3. Plaintiff did not serve his initial disclosures required by Fed. R. Civ. P. 26(a)(1).
4. On December 30, 2009, the Court entered an order granting DBNTC’s motion to compel Plaintiff’s initial disclosures, in which it ordered Plaintiff “to serve full and complete initial disclosures on Deutsche Bank on or before January 15, 2010.” (D.E. # 16.) The Court warned Plaintiff that “failure to comply proper discovery requests, discovery obligations, or orders of this court will lead to dismissal of his complaint.” (*Id.*)
5. In violation of the Court’s clear directive, Plaintiff has not served his initial disclosures on DBNTC.

¹ On October 30, 2009, the Court entered an Agreed Order of Dismissal of Wilson & Associates PLLC. (D.E. # 7.)

6. Rule 41(b) of the Federal Rules of Civil Procedure provides that where a plaintiff fails to obey an order of the Court, "a defendant may move to dismiss the action or any claim against it." Furthermore, under Rule 37(b)(2)(A)(v) of the Federal Rules of Civil Procedure, a district court may sanction parties who fail to comply with its orders in a variety of ways, including dismissal of the lawsuit.

7. Plaintiff failed to comply with the Court's December 30, 2009 Order directing him to serve initial disclosures as required by Rule 26 of the Federal Rules of Civil Procedure. Because of Plaintiff's violation of the Court's Order, his claims should be dismissed with prejudice.

8. DBNTC incorporates by reference its Memorandum in Support of its Motion to Dismiss for Plaintiff's Failure to Comply with Court Order.

WHEREFORE, Deutsche Bank National Trust Company respectfully requests the Court to dismiss with prejudice Plaintiff's complaint for failure to comply with the Court's December 30, 2009 Order.

RESPECTFULLY SUBMITTED, this the 1st day of February, 2010.

/s Melody McAnally

Eric E. Hudson (TN BPR No. 022851)

Melody McAnally (TN BPR No. 025971)

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*Attorneys for Defendant Deutsche Bank National
Trust Co.*

CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2010, I electronically filed the foregoing document with the Clerk of Court using the ECF system. I further certify that I have mailed by U.S. mail, postage prepaid, the foregoing document to the following non-ECF participant:

Mr. Tyrone Oliver
3699 Wayne Avenue
Memphis, TN 38122

/s Melody McAnally